

Pages 1 - 20

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PAUL S. GREWAL, MAGISTRATE JUDGE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	NO. 5:15-MJ-70142-MAG
	)	
ARMIN HARCEVIC,	)	
	)	
Defendant.	)	San Jose, California
_____	)	Friday, February 13, 2015

**TRANSCRIPT OF OFFICIAL ELECTRONIC SOUND RECORDING**  
**OF PROCEEDINGS**

FTR 1:56 p.m. - 2:19 p.m. = 23 minutes

**APPEARANCES:**

For Plaintiff: MELINDA L. HAAG, ESQ.  
United States Attorney  
150 Almaden Boulevard, Suite 900  
San Jose, California 95113  
BY: **AMBER S. ROSEN**  
Assistant United States Attorney

For Defendant: STEVEN KALAR  
Federal Public Defender  
55 South Market Street, Suite 820  
San Jose, California 95113  
BY: **GRAHAM ARCHER**  
Assistant Federal Public Defender

Also Present: LaDreena Walton, Pretrial Services Officer

Transcribed by: Leo T. Mankiewicz, Transcriber  
leomank@gmail.com  
(415) 722-7045

1 Friday, February 13, 2015

2 1:56 p.m.

3 P R O C E E D I N G S

4 (Defendant present in court.)

5 **THE COURT:** Mr. Rivera, whenever you're ready, you may  
6 call the next matter, sir.

7 **THE CLERK:** Calling United States versus Armin  
8 Harcevic, case number 15-MJ-70142-MAG, matter on for detention  
9 hearing.

10 Please state your appearances.

11 **MS. ROSEN:** Good afternoon, your Honor. Amber Rosen  
12 for the United States.

13 **THE COURT:** Good afternoon, Ms. Rosen. Welcome back.

14 **MR. ARCHER:** Good afternoon, your Honor. Graham  
15 Archer for Mr. Harcevic, who's present before the Court in  
16 custody.

17 **THE COURT:** Mr. Archer, good afternoon once again.  
18 Mr. Harcevic, good afternoon, sir.

19 **THE DEFENDANT:** Good afternoon.

20 **THE COURT:** Mr. Harcevic, we are here this afternoon  
21 for a hearing on the government's request that you remain in  
22 custody as this case moves forward. This hearing is something  
23 we refer to here in the court system as a bail hearing or a  
24 detention hearing.

25 The Court's objective in this hearing is to determine

1 whether I can set conditions that will allow you to be released  
2 or whether, in fact, no such conditions can be set and your  
3 further detention is required.

4 Mr. Archer undoubtedly has much to say about this, so  
5 I'm eager to hear what he believes should be done, but because  
6 the government is the one making this request, I'll start with  
7 the government prosecutor. I'll then turn to Mr. Archer for  
8 your position.

9 Do you understand this, sir?

10 **THE DEFENDANT:** Yes.

11 **THE COURT:** All right, let's proceed. Ms. Rosen, go  
12 ahead.

13 **MS. ROSEN:** Thank you. As the Court is aware, this is  
14 a case where detention is presumed under 3142(e)(3)(C), because  
15 the crimes with which the defendant is charged are crimes of  
16 terrorism.

17 We believe that defendant cannot overcome the  
18 presumption because he is both a flight risk, and that's  
19 primarily the purpose, but also there's a danger posed from his  
20 release.

21 In making this determination, as the Court is aware,  
22 it needs to consider four things: The nature and circumstances  
23 of the offense, the weight of the evidence, the history and  
24 characteristics of the defendant and the nature and seriousness  
25 of the danger, and so I'd like to go through each of those

1 factors.

2 **THE COURT:** Go ahead.

3 **MS. ROSEN:** In terms of the nature and circumstances  
4 of the offense, the charges are extremely serious. In fact,  
5 one could scarcely think of more serious offenses than  
6 supporting and providing material support to terrorists.

7 The indictment alleges that defendant facilitated the  
8 conspiracy by contributing personal money intended for it to be  
9 used in support of Pazara, who's one of the fighters who was in  
10 Syria and Iraq fighting in support of ISIS and Al Qaeda. It  
11 alleges that the defendant knew that Pazara and others were  
12 engaged in violent activities overseas, including conspiring to  
13 murder and maim other people.

14 The indictment further states that he collected money  
15 from others and sent his own money to his co-defendant Siki  
16 Hodzic, and they sent \$1,500 to Siki Hodzic, who then  
17 transferred it to Turkey, in order that it be sent to Pazara  
18 and others fighting for ISIS and Al Qaeda. It also states that  
19 Pazara told someone that he had been part of a mission which  
20 killed 11 people. In terms -- so the seriousness of the  
21 offense and the presumption, obviously, works toward detention.

22 In terms of the weight of the evidence, we have here  
23 an indictment, so there's probable cause has already been  
24 conclusively determined against the defendant for the offenses  
25 for which he's charged.

1 In terms of his history and characteristics, the  
2 defendant has no employer. He has an unstable work history.  
3 He is self-employed, sometimes as a handyman, but it's not  
4 stable work. His wife is also unemployed, and neither has any  
5 employer in St. Louis. He has no known financial assets, no  
6 property anywhere in the United States or abroad.

7 While he currently lives here in San Jose with his  
8 wife and children, they just moved here in January of 2015 and  
9 are renting. We believe that he left St. Louis where he had  
10 been living for several years before coming to San Jose because  
11 one of his co-defendants believed he was being investigated.  
12 So basically, when the heat was on in St. Louis is when he  
13 moved here.

14 He's not a citizen of the United States. He is a  
15 citizen of Bosnia, where his mother still lives. He has  
16 traveled there four times between 2002 and 2009. He was denied  
17 American citizenship based on bad moral character, and he has a  
18 brother who's known to have traveled to Syria, as well.

19 In terms of danger, we've based his -- the fact that  
20 he does pose a danger based primarily on the nature of the  
21 crime and the fact that there are ongoing calls from ISIS and  
22 Al Qaeda for violent activities, and we believe that this could  
23 be a triggering event, the arrest of defendant and his  
24 co-defendant. So we believe there is some danger, although, of  
25 course, we have no history of violence by this particular

1 defendant.

2 This is a very serious offense. This is not our case.  
3 This is, as you know, charged out of the Eastern District of  
4 Missouri. We believe we have a responsibility to deliver the  
5 defendant to Missouri to face the charges, and so we would ask  
6 for detention in this case.

7 **THE COURT:** All right, thank you, Ms. Rosen.

8 Mr. Archer, you may proceed.

9 **MR. ARCHER:** Thank you, your Honor. We're in a little  
10 bit of a tenuous position here because the report that is  
11 before the Court lists his wife as a surety and a couple of  
12 other folks that are unsure.

13 In the interim, I've had conversations with a number  
14 of folks, many of whom are present in the court, and I would  
15 like to acknowledge the people that are here on behalf of  
16 Mr. Harcevic. They are both close friends and also members of  
17 his mosque, as well as family members as well as his three  
18 young children, who have been making a bit of a ruckus in the  
19 courtroom prior to this case being called.

20 The defendant -- I'd like to address a few of the  
21 government's points first. The defendant's return with his  
22 family to San Jose was not a flight from St. Louis. He lived  
23 in St. Louis, he had previously lived in San Jose, and Pretrial  
24 Services has verified that he had -- while he came to the U.S.  
25 in 1999 in L.A., he settled in San Jose and had traveled back

1 to live in St. Louis for a little while with family.

2 He has friends and family who are here. The friends  
3 have known him for three or more years, are close friends, are  
4 with him for five or more days a week in prayer services and  
5 meetings. They are here to speak with the Court about his  
6 gentle nature as well as speak to the Court about their  
7 viability as surety, both based on their income, if the Court  
8 is interested in an unsecured bond, as well as the viability of  
9 their equity that they have in their homes, which is quite  
10 significant.

11 And as to the flight risk, the travel to Bosnia was to  
12 visit his mother. The travel has ceased since the birth of his  
13 first child. He hasn't left the country in a while. His  
14 passport is expired.

15 The government's concerns about danger, from my  
16 perspective, are entirely speculative. They are at some sort  
17 of general suggestion that there would be retaliation for the  
18 arrest of the people charged in this case. I have no idea why  
19 that would cause the father of three, with significant roots  
20 both here and in St. Louis, to suddenly flee or cause some sort  
21 of danger.

22 The government is correct that there has been a  
23 document filed that establishes probable cause from a grand  
24 jury in St. Louis as to some of these charges, but it's  
25 instructive of that document -- the government speaks, in some

1 sense, in generalities as to communications that occurred. The  
2 document does not allege that Mr. Harcevic was aware of any  
3 communications about killing anybody. There's an overt act  
4 alleged in paragraph 23 that suggests that Mr. Harcevic sent  
5 \$1,500 to another co-defendant. It's not even a transfer out  
6 of the country to a contact out of the country. It's a  
7 transfer within the country to another co-defendant.

8 I'm failing to see where a history of inappropriate  
9 travel would be, I'm failing to see where the danger would be,  
10 and but for some hesitation on the part of sureties who were  
11 concerned because of what has been a recent history of the  
12 interaction of their community with the FBI and others, would  
13 have stepped forward as sureties. But they're available here  
14 today if the Court would like to interview them, and they are  
15 available not only to provide absolutely rock-solid sureties  
16 based on their income and their financial situation, but also  
17 to potentially provide either cash or property sureties to  
18 permit Mr. Harcevic's release.

19 He has a stable home in San Jose with his wife. They  
20 are renting, but he is the father of three children. He is a  
21 handyman, has worked as a property manager at a number of  
22 properties. He's described by those that I've spoken with in  
23 this case as a gentle and caring man with a focus on charity.

24 So I'd be happy to address any of the concerns of the  
25 Court. I'd also be interested in the Court inquiring of any of



1 the potential sureties that are available today.

2 **THE COURT:** Mr. Archer, one concern I have has to do  
3 with the resources available to Mr. Harcevic outside this  
4 country should he choose to flee. Do you want to speak to  
5 that? As I understand it, his mother lives in Bosnia still,  
6 correct?

7 **MR. ARCHER:** That is correct, your Honor. His father,  
8 however, lives in St. Louis, and I believe the balance of his  
9 family lives here. He is not a man of means. The family home  
10 in Bosnia, I believe, is valued at about 20,000 American  
11 dollars. I believe we have an extradition treaty with Bosnia.  
12 I don't think that's an issue, and he doesn't have any ties to  
13 any other countries.

14 **THE COURT:** Are you aware of any history of our  
15 successfully extraditing any individuals from Bosnia?

16 **MR. ARCHER:** I have not had -- I have not had cases to  
17 that issue, but I -- he's a legal permanent resident here with  
18 an established family and ties to the community. The fact that  
19 he's -- that he emigrated from Bosnia after a war and a  
20 genocide should not suggest that he's rushing to go back there.  
21 In fact, he has not gone back there, even for pleasure, since  
22 the birth of his children. He's been here, caring for them as  
23 a father.

24 And to address the government's concerns about the  
25 seriousness of the case, I mean, frankly, I understand that

1 there's a great fear of terrorism in this country right now,  
2 and it's instructive that he's not charged in Count 2, which is  
3 the conspiracy to commit harm to people abroad.

4 Frankly, your Honor, I stand before the Court  
5 routinely on 10-, 15-gram methamphetamine sales that carry, you  
6 know, unbelievably higher, and they carry life terms, they  
7 carry five-year and ten-year mandatory minimums.

8 So for the government to stand here and say this is  
9 the most possible crime, Congress has not been shy about  
10 legislating terrorism. This is a 15-year top. I mean, it's  
11 less than a wire fraud count, it's less than a bank fraud  
12 count, it's less than a mail fraud count.

13 So I don't think the seriousness of the crime,  
14 especially as alleged, a \$1,500 transaction to a co-defendant,  
15 approaches what could be described as a serious and scary  
16 crime.

17 **THE COURT:** All right, Mr. Archer, I'll give you an  
18 opportunity to weigh in further, but I'd like to hear from  
19 Ms. Rosen in response to what you had to say, unless you have  
20 anything further you wish to tell me now.

21 **MR. ARCHER:** No, your Honor.

22 **THE COURT:** Okay, thank you.

23 Ms. Rosen?

24 **MS. ROSEN:** Thank you, your Honor. Just to reiterate,  
25 we do believe that he is a flight risk with his unstable work

1 history, lack of assets, lack of property, ties to Bosnia.

2 I failed to mention, he does have these two arrests,  
3 one from August of 2014 which we don't even know what it was  
4 for, but he's on the --

5 **THE COURT:** I wanted to ask --

6 **MS. ROSEN:** -- person of interest list.

7 **THE COURT:** -- you about that. Does the government  
8 have any further information about that?

9 **MS. ROSEN:** I do not have any further information  
10 about that. So these are issues of concern.

11 In terms of the seriousness of the offense, Congress  
12 has said that it's a serious offense, which creates a  
13 presumption for detention based on the seriousness of the  
14 offense. Moreover, he is charged in a conspiracy to provide  
15 material support to terrorists who were killing people  
16 overseas.

17 So we disagree with Mr. Archer's characterization of  
18 the offense, and the probable cause determination of that is  
19 significant, and the Supreme Court has said that the probable  
20 cause findings supporting a grand jury indictment is a  
21 significant factor for purposes of determining a defendant's  
22 release conditions, and that's *Kaley v. United States*.

23 So we believe that detention is appropriate here,  
24 regardless of the sureties, and we would submit it on that,  
25 your Honor. Thank you.

1           **THE COURT:** Thank you.

2           Mr. Archer?

3           **MR. ARCHER:** Your Honor, we have a room full of  
4           sureties that easily rebut the presumption. The presumption  
5           exists in a number of cases, including, as I mentioned before,  
6           drug transactions, as well. I mean, there's nothing about a  
7           15-year maximum penalty case that would make this some kind of  
8           special presumption. This is the same presumption that's  
9           overcome with far less secured surety.

10                 So if the Court has any concern about the viability of  
11           the sureties -- and I want to be clear, I'm not offering the  
12           people in the -- only in the report, though his sister is  
13           available and here as a surety, but both of the Alayleh  
14           brothers are here, Majed and his brother Mehmeddine. They are  
15           both here and have -- in terms of the sureties that I've  
16           encountered in my cases in the last, you know, a few years,  
17           this is the strongest showing that I've seen, and these are  
18           some of the most solid sureties that I've ever been able to  
19           offer to the Court, and I think the presumption is well  
20           rebutted.

21                 Simply having a mother abroad and being a legal  
22           permanent resident, if that were the standard for detention in  
23           a presumption case, then everyone would be detained. This is  
24           exactly the scenario where I understand the government's  
25           concerns, but this is exact the scenario where we have

1 extraordinary community support, and both the cash and the  
2 property bond to allay the Court's concerns.

3 **THE COURT:** All right, is there anything further you  
4 wish to add, counsel?

5 **MR. ARCHER:** No, your Honor.

6 **THE COURT:** Officer Walton, let me welcome you again.  
7 It is my understanding that Pretrial Services is recommending  
8 detention, is that correct?

9 **PRETRIAL SERVICES OFFICER:** That is correct, your  
10 Honor.

11 **THE COURT:** Okay, and I also understand that when you  
12 spoke to at least two of the proposed sureties, there was a  
13 hesitation. Was that hesitation largely in light of the  
14 uncertainty of the amount of the bond? Was that the issue?

15 **PRETRIAL SERVICES OFFICER:** Yes. Defense counsel did  
16 provide me with the names and the contact information early  
17 this morning for some potential sureties. My concern was that  
18 none of these individuals were mentioned during my interview of  
19 the defendant. They also weren't mentioned when I spoke to his  
20 wife. She only named one good friend, and his information is  
21 included in this report.

22 So I felt that if there were people that were really  
23 close to the defendant and his wife, that their names would  
24 have been provided immediately, and they were not. It's just,  
25 this morning, there were several people apparently came forward

1 that I haven't had an opportunity to interview. So we're  
2 continuing to recommend detention at this time.

3 **THE COURT:** All right, thank you.

4 Mr. Archer, anything further?

5 **MR. ARCHER:** Yes, your Honor, I can address that.

6 There was a shyness, I think -- first of all, the defendant,  
7 while he does have a misdemeanor conviction for being an  
8 unlicensed handyman in 2005, has never been in a situation like  
9 this before in his life. His wife has never, either. She did  
10 not imagine that the members of the community would be willing  
11 to step forward and did not -- in fact, Mr. Harcevic was not  
12 asked, do you have close friends, you know, and are other  
13 members of your community willing to step up as sureties. So  
14 I apologize for the delay in providing those sureties.

15 From my conversations with them, I am very satisfied  
16 that they would provided adequate sureties. There -- a number  
17 of them are present in court today, and I would invite the  
18 Court to speak with them, including Majed Alayleh, who's listed  
19 in the report, as to how they know Mr. Harcevic, or if the  
20 Court wishes to have that done by Pretrial Services, I would  
21 understand, as well.

22 **THE COURT:** All right.

23 **MS. ROSEN:** Your Honor, there's one other that we  
24 have --

25 **THE COURT:** Go ahead, Ms. Rosen.

1           **MS. ROSEN:** I don't know -- I mean, we don't know who  
2 these sureties are and we don't know how much money they have  
3 and whether they're planning to put up cash or property.  
4 Obviously, those are some of the inquiries that would be  
5 undertaken if that's the route the Court wants to do.

6           In terms of property, though, the only thing I would  
7 say about that is, you know, of course, this defendant needs to  
8 appear in Missouri. All of the other co-defendants have been  
9 picked up, arrested, detained and removed to St. Louis. You  
10 know, two are already in St. Louis with the other four, and so  
11 that just seems -- I don't know how long that would take, but  
12 it seems like it could delay the proceedings quite a bit, and  
13 it might be better just to let that all occur in Missouri, if  
14 that's where the Court's willing -- is intending to go, in  
15 terms of the property bond.

16           **MR. ARCHER:** I completely disagree. We can prepare a  
17 property bond by the end of next week; certainly, if the  
18 Court's inclined, perhaps even sooner, and the property's here.  
19 It doesn't make any sense, when his ties and his sureties are  
20 here, to continue the proceedings in St. Louis.

21           **THE COURT:** All right. Here's what we're going to do.  
22 This is a presumption case, and I think it's very important to  
23 keep that in mind. What that presumption means is that our  
24 Congress has decided that in certain cases, the burden lies  
25 with the defendant, rather than the government, on the issue of

1 detention. Whatever the wisdom of that decision, it's a  
2 decision I have to abide by.

3 In light of that presumption lying with Mr. Harcevic  
4 in this case, I am not satisfied -- not yet satisfied -- that  
5 I can set conditions that would adequately assure that  
6 Mr. Harcevic appears in St. Louis in federal court for his  
7 case, and those are -- on the basis of the risk of flight  
8 particularly that I am not yet satisfied.

9 I should also note that given the nature of the crimes  
10 that are alleged here, I respectfully disagree with defense  
11 counsel. I do think the seriousness of the crime here is  
12 sufficient.

13 So on that basis, I'm going to order Mr. Harcevic  
14 detained, and remanded to the Eastern District of Missouri to  
15 face these charges.

16 Having said that, having said that, at this point  
17 I don't have any information whatsoever about property or  
18 resources. I have some good citizens of this community who are  
19 willing to step forward, and I appreciate that, but I need more  
20 information.

21 So what I would propose to do is this. I'm going to  
22 order Mr. Harcevic detained, but I'm willing to set this for a  
23 further hearing, a reconsideration of my detention order, to  
24 allow Mr. Archer and to allow Pretrial Services to vet what  
25 resources might be brought to bear, what cash assets, what real



1 estate assets and other assets might be presented to this  
2 court.

3 Because I suspect that will take some time to marshal,  
4 unless counsel has a strong objection, my proposal would be to  
5 set this for a further hearing not next week, but early the  
6 week after, to give everyone some time to figure this out.  
7 I appreciate this may impose upon our colleagues in the Eastern  
8 District of Missouri, but I think it's important to get this  
9 right.

10 So I would propose something like Monday or Tuesday of  
11 the week after. Ms. Rosen, Mr. Archer, would that work for  
12 you?

13 **MS. ROSEN:** So we're talking about the 23rd or 24th,  
14 your Honor?

15 **THE COURT:** We are. We are.

16 **MS. ROSEN:** The 24th?

17 **MR. ARCHER:** Your Honor, the 24th is much better for  
18 me.

19 **THE COURT:** All right, Mr. Rivera, can you confirm the  
20 Court's availability?

21 **THE CLERK:** Yes, your Honor, Tuesday, February 24th at  
22 1:30, your Honor's available.

23 **THE COURT:** All right, and just to be clear, Officer  
24 Walton, I am most interested and appreciative in this matter if  
25 Pretrial Services can meet with any proposed sureties and also

1 evaluate whether any property that might be tendered and  
2 identified to Mr. Archer is suitable as a bond in this  
3 matter -- as security for a bond in this matter.

4 **PRETRIAL SERVICES OFFICER:** Yes, your Honor.

5 **THE COURT:** All right. And I appreciate your  
6 assistance on this.

7 **MS. ROSEN:** So your Honor, I take it you're then --  
8 you're deferring your order of removal.

9 **THE COURT:** You anticipated my very next step. Yes.  
10 So I am ordering the defendant detained, but I am not yet  
11 ordering him removed. We're going to keep Mr. Harcevic here in  
12 Santa Clara County until next Tuesday, that is, a week from  
13 Tuesday. At that time I'll consider whether any sureties can  
14 be presented, and depending on my decision, he'll either be  
15 released here or returned to St. Louis that day, but we're not  
16 going to delay it any further beyond that.

17 **MR. ARCHER:** Thank you, your Honor.

18 **THE COURT:** All right, does everybody understand how  
19 we're going to proceed?

20 **MS. ROSEN:** Yes, your Honor, thank you.

21 **THE COURT:** All right, Mr. Harcevic, have you been  
22 able to follow and understand everything I'm saying here, sir?

23 **THE DEFENDANT:** Yes.

24 **THE COURT:** All right, sir, then I am returning you to  
25 the custody of the marshals. You're going to be taken back to

1 the main jail this afternoon, but on Tuesday the 23rd --  
2 24th of February, at 1:30, you're going to return to this very  
3 same courtroom, sir. I'll consider the issue further at that  
4 time. I suggest when you next meet with your attorney, you ask  
5 him any questions you may have.

6 Mr. Rivera, do you need to consult with me?

7 Mr. Rivera points out that at this point, the issue of  
8 findings has not been addressed.

9 Mr. Archer, are you prepared to waive findings at this  
10 point?

11 **MR. ARCHER:** Yes, your Honor, perhaps with the -- for  
12 the moment, I'm (inaudible) the hearing.

13 **THE COURT:** All right, all right.

14 **MR. ARCHER:** If that makes sense.

15 **THE COURT:** Well, I will note for purposes of our  
16 record today that the findings are waived. I will note,  
17 however, if my reconsideration is -- if your motion for  
18 reconsideration, which I take it you're making --

19 **MR. ARCHER:** I'm now making, your Honor.

20 **THE COURT:** -- all right -- is denied on Tuesday the  
21 24th, I will revisit the issue of findings and invite you to  
22 request them, and if necessary, I'll draft them at that point.

23 **MR. ARCHER:** Thank you, your Honor.

24 **THE COURT:** Does that make sense? Okay. All right,  
25 we'll see you back here on the 24th. Have a good afternoon,

1 sir.

2 MS. ROSEN: Thank you.

3 2:19 p.m.

4 ---o0o---

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

**CERTIFICATE OF TRANSCRIBER**

I, Leo Mankiewicz, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.



03/23/2015

Signature of Transcriber

Date